



**State of New Hampshire**  
**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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Pittsfield School District

Petitioner

and

Education Association of Pittsfield  
NEA-NH

Respondent

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Case No. E-0024-2

Decision No. 2007-182

APPEARANCES

Representing: Pittsfield School District

Jay C. Boynton, Esq., Andover, New Hampshire

Representing: Education Association of Pittsfield, NEA-NH

James F. Allmendinger, Esq., NEA-NH, Concord, New Hampshire

BACKGROUND

On September 27, 2007 the Pittsfield School District ("District") filed an unfair labor practice complaint alleging that the Education Association of Pittsfield, NEA-NH ("Association") violated RSA 273-A:5, II (f) by seeking binding arbitration of pending grievances concerning retroactive pay calculations. The District contends that the Association seeks more funds than either the School Board or the voters approved when the current contract was ratified. As remedies, the District asks that the PELRB find that the pending grievances are not arbitrable and that the Association cease and desist from its demand for binding arbitration.

The Association filed its answer on October 12, 2007, and contends that it is seeking proper salary placement, and not retroactive pay increases. The Association also disputes the District's claims concerning funding for the requested teacher salary, or step, placements. The

Association claims that it has properly grieved the question of salary, or step, placement, and is entitled to proceed to arbitration.

The undersigned hearing officer conducted a hearing on the complaint on October 31, 2007 at the PELRB in Concord. The parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. The record was held open until November 15, 2007 to allow the parties to file briefs. Both parties have filed briefs, and the record is now closed. The District's brief included as Appendix 1 the minutes of an October 12, 2006 special school district meeting. The District did not request permission to file this document prior to the close of the October 31, 2007 hearing. On November 15, 2007 the Association filed a Motion to Strike District's New Exhibit. The District filed its objection to this motion on November 20, 2007.

### FINDINGS OF FACT

1. The Pittsfield School District is a public employer subject to the provisions of RSA 273-A.
2. The Education Association of Pittsfield, NEA-NH is the certified exclusive representative of certain employees of the Pittsfield School District.
3. The Pittsfield School Board and the Association are parties to a collective bargaining agreement from August 25, 2007 to August 31, 2010 (the "2007-2010 CBA").
4. The immediately preceding collective bargaining agreement expired prior to the 2006-2007 school year, and accordingly the parties were in status quo during that school year.
5. Teachers did not receive a step increase during the 2006-2007 school year, and the Association does not contend that they should have been awarded a step increase during that school year.
6. On June 5, 2007 the Association filed a grievance, contending that the School Board violated the 2007-2010 CBA by "failing to provide step advancement on the salary schedule for 2007-2008 as appropriate for attaining another year of experience."
7. The superintendent of schools denied the grievance, as did the school board.
8. As to teacher compensation, the 2007-2010 CBA provides that "[s]alary for professional employees certified to be represented by the Association will be established according to the Step and Track Schedule found in Appendix A for the 2007-2008, 2008-2009, 2009-2010 years."
9. Under the 2007-2010 CBA, a grievance means "a complaint ...that there has been a personal loss or injury to the employee or group because of a violation,

misinterpretation or misapplication of the provisions of this Agreement." Level Four calls for final and binding arbitration and includes the provision that the arbitrator "shall have no power or authority to render a decision that ignores or adds to the agreement of the parties."

10. The voters approved increases in salaries and benefits for bargaining unit members for the 2007-2008 school year in the amount of \$342,385.00 and voted to raise and appropriate that amount for the 2007-2008 school year.

## DECISION AND ORDER

### JURISDICTION

The PELRB has primary jurisdiction of all violations of RSA 273-A:5. RSA 273-A:6 I. PELRB jurisdiction is proper in this case as the District has alleged a violation of RSA 273-A:5, II (f).

### DISCUSSION

While the PELRB has primary jurisdiction of all ULP claims alleging violations of RSA 273-A:5, see RSA 273-A:6, I, it does not generally have jurisdiction to interpret the CBA when the CBA provides for final binding arbitration. The CBA in this case provides for final binding arbitration but does not specifically state that the arbitrator is to determine the arbitrability of claims or that the PELRB should not perform this task. Accordingly, the PELRB must decide the question of arbitrability in this case and review and interpret the CBA for this purpose. Appeal of the City of Manchester, 153 N.H. 289, 293 (2006)(quotations and citations omitted). See also Appeal of Police Comm'n of City of Rochester, 149 N.H. 528 (2003); Appeal of State, 147 N.H. 106 (2001); and Appeal of Town of Bedford, 142 N.H. 637 (1998). "The extent of the parties' agreement to arbitrate determines the arbitrator's jurisdiction, and the overriding concern is whether the contracting parties have agreed to arbitrate a particular dispute." Appeal of the City of Manchester at 2 (quotations and citations omitted). Additionally,

A presumption of arbitrability exists if the CBA contains an arbitration clause, but the court may conclude that the arbitration clause does not include a particular grievance if it determines with positive assurance that the CBA is not susceptible of an interpretation that covers the dispute. Furthermore, the principle that doubt should be resolved in favor of arbitration does not relieve a court of the responsibility of applying traditional principles of contract interpretation in an effort to ascertain the intention of the contracting parties.

Appeal of Town of Bedford, 142 N.H. at 640 (quotations and citations omitted).

The District argues that the underlying grievance is not arbitrable. As support, the District has marshaled evidence indicating that teachers were not entitled to a two step increase for the 2007-2008 school year, including a spreadsheet prepared by the parties during contract negotiations and contained in District Exhibit 4. The wages and step assignment recorded on the spreadsheet correspond to a single step increase under the 2007-2010 CBA, Appendix A, for the

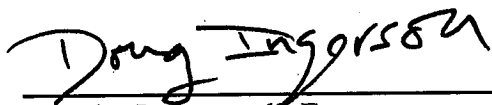
2007-2008 school year. The dollar increase of \$342,385.46 stated in the spreadsheet corresponds to a cost item in the amount of \$342,385.00 contained in Warrant Article IV, approved by the voters in March, 2007, as shown on District Exhibits 6 and 7. The District contends that this evidence demonstrates that teachers were in fact placed on the proper step. The District also contends arbitration is inappropriate because the Association's requested application of the step schedule will result in the award of compensation greater than the amount approved by the voters, contrary to RSA 273-A:3, II (b).

However, the evidence offered by the District to establish that teachers have in fact been placed on the proper step does not determine the arbitrability of the underlying grievance in this case. RSA 273-A:3, II (b) has limited application to this case since the Association does not seek to exceed the undisputed cost item in the amount of \$342,385.00 but instead contends that \$342,385.00 is sufficient to fund a two-step increase. As support, the Association relies upon employee turnover, including new hires and retirements, which have occurred since the time the spreadsheet contained in District Exhibit 4 was prepared. The pending grievances can be arbitrated because the Association has raised a "complaint" based upon an alleged "personal loss" to the involved employees, namely the loss of salary arising from the allegedly erroneous application of the pay schedule contained in Appendix A to the 2007-2010 CBA. The amount of compensation the District is obligated to pay to teachers is specifically addressed in the 2007-2010 CBA. The 2007-2010 CBA is susceptible of an interpretation that covers this dispute, although it may be necessary to resort to extrinsic evidence to resolve the matter.

Accordingly, the District's unfair labor practice complaint is denied. The Association may proceed to arbitration. However, the arbitration proceeding is subject to the relevant and approved cost item in the amount of \$342,385.00. The Association's Motion to Strike District's New Exhibit is granted. See Pub 203.05. It is also noted that the offered document would not, if admitted, alter the decision in this case.

So ordered.

December 18, 2007



Douglas L. Ingersoll, Esq.  
Hearing Officer

Distribution:

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